

Law and the Holocaust

Dr. William Meinecke

United States Holocaust Memorial Museum



Judges of the Berlin courts swear allegiance to Adolf Hitler. Berlin, Germany, October 1936. Judges swore this oath:

“I swear I will be true and obedient to the Fuhrer of the German Reich and people, Adolf Hitler, observe the law and conscientiously fulfill the duties of my office, so help me God.” *Reich Law Gazette I*, 1934, page 785.

LAW AND THE HOLOCAUST

This seminar will explore the legal system in Nazi Germany and the role of Law in the Holocaust.

Morning Session: Introduction to the History of the Holocaust for Jurists

Part 1 The Holocaust: An overview

This session encourages discussion about the Holocaust through the interpretation of images from the 1930s and 1940s with special emphasis on the role played by law and jurists.

Afternoon Session: From Law to Injustice

Part 2: The Legal Assault on Jews

This segment explores a case study of the German Supreme Court's interpretation and application of the Nuremberg Race Laws in Nazi Germany.

Part 3 Hitler as "Highest Judge" The Special Courts and the People's Court

This segment covers the ultimate loss of judicial independence in Nazi Germany during World War II and the reign of terror imposed by the Nazi legal system from 1942 until 1945.

Concluding Discussion: What are the lessons of the Holocaust for American jurists today? How will the Holocaust shape the future role of law and the courts in American society? What prevents a similar system of injustice from happening here?

Dr. William Meinecke is an historian in the Education Division of the United States Holocaust Memorial Museum. He received his BA in German and History at the University of Maryland at Baltimore County. He attended the University of Bonn and Berlin in Germany and received his MA (1988) and also his Ph.D. (1998) in history from the University of Maryland at College Park. His dissertation title was *Conflicting Loyalties: The Supreme Court in Weimar and Nazi Germany 1918-1945*. For the last five years Dr. Meinecke has worked with law enforcement officers, judges, prosecutors and attorneys in the Museum's Law Enforcement and Society: Lessons of the Holocaust training program. The program runs from 9:00 a.m. to 3:00 p.m.

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Prewar photograph of three Jewish children with their babysitter. Two of the children perished in 1942. Warsaw, Poland, 1925-1926.

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THE HOLOCAUST

The Holocaust was the systematic, bureaucratic, state-sponsored persecution and murder of approximately six million Jews by the Nazi regime and its collaborators. "Holocaust" is a word of Greek origin meaning "sacrifice by fire." The Nazis, who came to power in Germany in January 1933, believed that Germans were "racially superior" and that the Jews, deemed "inferior," were "life unworthy of life." During the era of the Holocaust, the Nazis also targeted other groups because of their perceived "racial inferiority": Roma (Gypsies), the handicapped, and some of the Slavic peoples (**Poles**, Russians, and others). Other groups were persecuted on political and behavioral grounds, among them Communists, Socialists, Jehovah's Witnesses, and homosexuals.

In 1933, the **Jewish population** of Europe stood at over nine million. Most European Jews lived in countries that the Third Reich would occupy or influence during World War II. By 1945, close to two out of every three European Jews had been killed as part of the "**Final Solution**", the Nazi policy to murder the Jews of Europe. Although Jews were the primary victims of Nazi racism, **other victims** included tens of thousands of **Roma** (Gypsies). At least 200,000 mentally or physically disabled people were murdered in the **Euthanasia Program**. As Nazi tyranny spread across Europe, the Nazis persecuted and murdered millions of other people. More than three million Soviet prisoners of war were murdered or died of starvation, disease, neglect, or maltreatment. The Germans targeted the non-Jewish Polish intelligentsia for killing, and deported millions of Polish and Soviet citizens for forced labor in Germany or in occupied Poland. From the earliest years of the Nazi regime,

homosexuals and others deemed to be behaving in a socially unacceptable way were persecuted. Thousands of political dissidents (including Communists, Socialists, and trade unionists) and religious dissidents (such as **Jehovah's Witnesses**) were also targeted. Many of these individuals died as a result of incarceration and maltreatment.

Before beginning the war in 1939, the Nazis established **concentration camps** to imprison Jews, Roma, other victims of ethnic and racial hatred, and political opponents of Nazism. During the war years, the Nazis and their collaborators created **ghettos**, transit camps, and forced-labor camps. Following the invasion of the Soviet Union in June 1941, **Einsatzgruppen** (mobile killing units) carried out mass-murder operations against Jews, Roma, and Soviet state and Communist party officials. More than a million Jewish men, women, and children were murdered by these units. Between 1942 and 1944, Nazi Germany deported millions more Jews from the occupied territories to **extermination camps**, where they murdered them in specially developed killing facilities.



The Holocaust
See maps

In the final months of the war, SS guards forced camp inmates on **death marches** in an attempt to prevent the Allied **liberation** of large numbers of prisoners. As Allied forces moved across Europe in a series of offensives on Germany, they began to encounter and liberate concentration camp prisoners, many of whom had survived the death marches. World War II ended in Europe with the unconditional surrender of German armed forces in the west on May 7 and in the east on May 9, 1945.



**The elder of two daughters
born to a Jewish father and a
Catholic mother, ...**
Personal stories



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Abraham Lewent's prisoner jacket

In the **aftermath** of the Holocaust, many of the survivors found shelter in displaced persons (DP) camps administered by the Allied powers. Between 1948 and 1951, almost 700,000 Jews emigrated to Israel, including more than two-thirds of the Jewish displaced persons in Europe. Others emigrated to the United States and other nations. The last DP camp closed in 1957. The crimes committed during the Holocaust devastated most European Jewish communities.



Frau Henny Wiener

Einsatzgruppen (mobile killing units)

[View historical film footage](#)

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LAW AND JUSTICE IN THE THIRD REICH, 1933-1945

In 1933, less than a month after Hitler's rise to power, the Nazis enacted "protective detention" (*Schutzhaft*) in the aftermath of a fire that destroyed the Parliament (Reichstag) building. Hitler claimed the Communists set the fire as a signal for an uprising against the state. In Nazi terminology, protective detention meant the arrest--without judicial review--of potential and real opponents of the regime and their incarceration in concentration camps without specific charge or trial. The police alone judged whether an arrest was necessary because of some "potential" danger to the security of the Reich. In 1938, the Secret State Police or Gestapo (*Geheime Staatspolizei*) became the sole agency to authorize "protective detention." Prisoners were sent to concentration camps on the basis of a protective detention order, signed by the appropriate Gestapo official. Permission to execute a prisoner required a signed order from the chief of the Security Police and SD (*Sicherheitsdienst* or Security Service) in Berlin.

At first, most protective detention prisoners were political opponents of the Nazi party: Communists, Socialists and trade unionists. Later, protective detention prisoners came to include so-called "racial enemies," especially Jews and also smaller groups, like the Jehovah's Witnesses, who for reasons of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. In 1936-1937, the police forces in the Third Reich began to round up large groups of "Asocials" (panhandlers, "habitual criminals," vagrants, marginally disabled persons, prostitutes, pimps, persons unable to obtain or maintain steady employment, Gypsies, homosexuals, and others perceived not to be maintaining a healthy standard of social behavior). The standard "legal" tool employed by the Criminal Police was "preventive arrest" (*Vorbeugende Verhaftung*). "Preventive arrest" permitted criminal police detectives to take persons suspected of participating in criminal activities into custody without warrant or judicial review of any kind. Both "protective detention" and "preventive arrest" meant indefinite internment in a concentration camp.

Alongside the arbitrary power of Hitler and the police, the judicial system continued to function, at least at first, as it had in the Weimar Republic. Yet, like most areas of public life after the Nazi rise to power in 1933, the German system of justice underwent an alignment with Nazi goals (*Gleichschaltung*). All professional associations involved with the administration of justice were merged into the National Socialist League of Law Guardians (NSRWB). Nazi discipline and indoctrination soon became part and parcel of a legal career. The Nazis required all law students to undergo Nazi indoctrination; jurists spent six weeks studying Nazi concepts like race and the community spirit of the nation. This schooling in Nazi legal concepts continued under the auspices of the NSRWB throughout their career.

In April 1933, the Nazis dismissed Jewish and left-oriented judges, lawyers, and other court officers from their positions. The largest German state, Prussia, had employed about 6,500 judges and prosecutors; of these the Nazis removed 850. About one-third of those removed were Jewish. The new civil service law, which was the basis for the dismissals, required that judges, states attorneys and other judicial officials "show at all times their willingness to defend and support the National Socialist state" or face removal from their posts. To maintain at least the appearance of judicial independence, judicial decisions could not be used as evidence of anti-Nazi behavior that was required to remove judges and other judicial officials from office. Despite Nazi indoctrination and the purge of Jewish and politically unacceptable jurists, most jurists were not Nazi but conservative. Conservative jurists thought they could remain at their posts, paying lip service to Nazi demands for loyalty, while continuing to judge cases on the actual merits.

However, Hitler determined to maximize the political reliability of the courts. In 1933 he established Special Courts throughout Germany to try politically sensitive cases. Hitler later ordered the creation of the People's Court (*Volksgesichtshof*) (Berlin, 1934) to try treason and other key "political cases" because he was dissatisfied with the 'not guilty' verdicts rendered by the Supreme Court (*Reichsgericht*) in the Reichstag Fire Trial. (The Nazi charge that the Communists were responsible for the arson could not be sustained before the Supreme Court.) The Nazis attempted to gain control over important court sentences by appointing Nazi judges to both the Special Courts and the People's Court. Before the war, the impact of the Special Courts and the People's Court, however, was relatively marginal. The People's Court, for example, tried only 1,026 cases of treason between 1935 and 1937, less than the number of defendants tried in a single year before the Supreme Court in the Weimar Republic. Until November 1938, the competency of the Special Courts extended only to political crimes and these were only marginally important in the criminal justice system. Between 1936 and 1939, the Special Court in Hamburg, for example, accounted for only 16 percent of all sentences handed down by Hamburg's State Courts.

Having secured independent police authority and a parallel system for trying political cases, Hitler and Nazi jurists moved to incorporate Nazi legal concepts into German law. Judges were enjoined to free themselves from the shackles of civil law, and let "healthy Folk sentiment" (*gesundes Volksempfinden*) guide them in their decisions---by which the Nazis really meant jurists should anticipate Hitler's will. The effects of this campaign are evident in the court's interpretation of the Nazi race laws.

The Supreme Court, especially, made an important contribution to the enforcement of the Law for the Protection of German Blood and German Honor, which prohibited marriages and sexual relations between Jews and Germans. Supreme Court decisions eased the difficulties in implementing anti-Jewish policies. The Supreme Court provided precise definitions and practical guidelines for the application of Nazi law in individual cases. Further, the Supreme Court's acceptance and application of the race laws conferred legitimacy on racial discrimination and persecution and also served propaganda purposes. The Court explicitly recognized the racial laws as a central act of National Socialist legislation and consistently broadened the application of the law. The

Court agreed that every step must be taken to prosecute those who violated the law. The Supreme Court never decided an appeal of the race laws in favor of the defendant. It readily applied the principle of racial inequality throughout German civil and criminal law and did so on its own initiative, under no apparent pressure from the Nazi state or the Ministry of Justice.

Before the World War II, Hitler accepted court decisions with which he did not agree as the price for the cooperation of conservative jurists. By the winter of 1941-42, when it became clear that the war would be protracted, Hitler no longer tolerated lenient court sentences. He demanded that judges impose death sentences as broadly as possible to protect the home front from rising criminality and defeatist provocateurs.

In a speech before parliament on April 26, 1942, Hitler harshly criticized the way the courts operated in Germany. He accused judges of sentencing criminals much too leniently. He "requested" and got a resolution formally recognizing his right to remove judges at will. He declared he would use this power to take immediate action against every "incorrect" court decision and remove any judge from office who did not "recognize the requirements of the hour."

On August 20, 1942, Hitler appointed a radical Nazi, Otto Thierack, Reich Minister of Justice and, at the same time, to head all the party legal offices. (The NSRWB and to assume the presidency of the Academy of German Law.) For the first time, one individual controlled all the important party and state posts in the administration of justice. On the same day as Thierack's appointment, Hitler appointed a radical Nazi, Roland Freisler, to the presidency of the People's Court in Berlin.

The appointments of Thierack and Freisler heralded the end of an independent judiciary in Nazi Germany. Less than six weeks after his appointment as Reich Minister of Justice, Thierack issued the first in a series of so-called "letters to be issued to all judges." These letters were actually official guidelines to be used in sentencing. The letters presented the position of the state on political questions and on the legal interpretation of Nazi laws, especially on the imposition of the death sentence. In practice, these letters tended to compel judges, who were under constant threat of removal, to decide cases according to the examples in the letters.

In addition to the radicalization of the judiciary through these letters to the judges, Thierack altered the relationship between the Ministry of Justice and the SS. In September 1942, Thierack agreed to the systematic transfer of specific categories of prisoners from the jurisdiction of the Ministry of Justice to the SS--all Jews, Gypsies, Russians, and Ukrainians as well as those Poles, Czechs and Germans convicted of serious crimes. Thierack affirmed that these prisoners were to be worked to death in the concentration camps.

While Thierack restructured the Ministry of Justice according to Hitler's wishes, Freisler transformed the People's Court into an instrument of mass terror. Freisler considered the Court to be the mechanism for the continuous self-purge of the German

people and presided over the trial of all important cases, especially over attacks on the Fuhrer and defeatism. In the pre-war period (1934-39), there were 72 death sentences. Between 1941 and 1945, the People's Court sentenced more than 5,000 people to death.

This radicalization of sentencing is also reflected in the civil courts of Nazi Germany. Between 1933-40, civil judges sentenced about 1,000 people to death; between 1941 and 1945, about 15,000 were sentenced to death.

The German Police: From Weimar Republic to Nazi Dictatorship

Among the most important duties of the police in any society are the maintenance of public order and the enforcement of the law. These duties can be especially problematic during a major change in the political organization of society.

The Nazis rose to power in Germany in January 1933 and established a dictatorship, ending the 12-year German experiment with democracy, the Weimar Republic. Yet the police were integrated relatively easily into the Nazi regime. There was neither a wholesale purge nor a wholesale resignation of policemen.

Most policemen in 1933 were not Nazis; but they were overwhelmingly conservative. Most policemen thought of themselves as neutral professionals, as impartial servants of the law. Their personal politics were supposed to be irrelevant to their duties. Yet they proved willing to support a Nazi government that destroyed democracy in Germany. The police in particular and conservatives in general supported the Nazis in 1933. Conservatives came to view a Nazi dictatorship as a solution, not just to the weaknesses of the Weimar Republic but to a whole series of professional difficulties peculiar to the police.

The greatest weaknesses of the Weimar Republic stemmed from the circumstances of its birth. Germany lost World War I, which seriously weakened the monarchy and led to the declaration of the Weimar Republic in 1918. In spite of the responsibility of the monarchy for World War I, many Germans blamed democratic parties for both the defeat and the humiliating peace treaty that followed it. Policemen especially were suspicious of democratic parties because they had been trained under the monarchy to regard them as enemies of the state. In the Weimar Republic, these parties dominated. Policemen continued to serve the state, in part, because they saw themselves as professionals bound to apply the law, regardless of their personal feelings. Yet most of them were not convinced democrats.

Economic dislocation from World War I and the destabilization of the economy brought on by war reparations meant that the governments of the Weimar Republic were always short of money. For the police this meant that funding was cut for hiring, training, promotions and raises. Neither was there money for modernization such as buying new forensic equipment or firearms. This loss of funding was made more urgent by the reduction in opportunities for advancement and appointments brought on by the influx of policemen from territories ceded by Germany to neighboring countries after the First World War. Positions had to be found for these policemen even as operating costs were cut to the bone. Young trainees and new policemen were demoralized by the resulting lack of professional advancement.

Even as police manpower suffered from budgetary cuts, the economic distress endemic in the Weimar Republic contributed to a rapid increase in crime. Criminal gangs involved in prostitution, narcotics, gambling, pornography, robbery and burglary developed and flourished. These gangs were well organized and often operated across state lines, frustrating police investigations. There was no national police force in the Weimar Republic. Each state in the German federation had its own police forces and followed its own police policies. Criminal investigations across state lines were hampered by a lack of police coordination. The police of the Weimar Republic were not a match for these gangs.

Just as normal crime expanded in the Weimar Republic, political crimes skyrocketed in the face of the ongoing political instability. Thousands of armed veterans and paramilitary units associated with radical political parties on both the right and the left engaged in riots and revolutionary attacks on the state. Some of these paramilitary forces had heavy weapons and a mass following, and the police were sometimes outnumbered and outgunned. Rampant crime and political unrest stretched police manpower to the breaking point.

Finally despite their professionalism, policemen had difficulty adjusting to the new democratic order of the Weimar Republic. Policemen were frustrated by restrictions on police authority. Some criminal cases were dismissed because the police failed to safeguard the rights of the accused or because important evidence was excluded because of improper police procedures. These police failures were exacerbated by the emergence of a free press highly critical of police operations. Public criticism fostered a siege mentality among the policemen, who were resentful that the public blamed them when constitutional restraints and lack of funding tied their hands.

When the Nazis came to power in 1933, many policemen remained skeptical of the party and its intentions because Nazi agitation, especially in the latter years of the Weimar Republic, had been treasonous and the police had been investigating both the Nazis and the Communists. Nevertheless Hitler posed as a champion of law and order, claiming he would uphold traditional German values. The police and many other conservatives looked forward to the extension of police power promised by a strong centralized state, welcomed the end of factional politics and agreed to end democracy.

Indeed, the Nazi State alleviated many of the frustrations the police experienced in the Weimar Republic. The Nazis shielded the police from public criticism by censoring the press. They ended street fighting by eliminating the Communist threat. Police manpower was even extended by the incorporation of Nazi paramilitary organizations as auxiliary policemen. They centralized and fully funded the police to better combat criminal gangs and promote state security. The Nazi State increased staff and training, and modernized police equipment. Further, the Nazis offered the police the broadest latitude in arrests, incarceration and the treatment of prisoners. The police moved to take "preventive action", that is to make arrests without the evidence required for a conviction in court and indeed without court supervision at all.

Initially, conservative policemen were satisfied with the results of their cooperation with the Nazi State. Crime did indeed go down and the operation of criminal gangs ended. Order was restored. But there was a price. The Nazi State was not a restoration of the imperial tradition. It was at its core thoroughly racist. The Nazis took control and transformed the traditional police forces of the Weimar Republic into an instrument of state repression, and eventually genocide. The Nazi State fused the police with the SS (*Schutzstaffel*) and SD (*Sicherheitsdienst*), two of the most radical and ideologically committed Nazi organizations. Heinrich Himmler, head of the SS, also became the chief of all German police forces. His associate Reinhard Heydrich of the SD, became at the same time the head of the security police, charged with safeguarding the Nazi regime. Nazi ideology became part of all police activities. The police were central figures not just in maintaining public order, but in combating so-called racial enemies designated by the Nazi state. It was in this context that "preventive police action" took on such terrible consequences. The SS, SD, and police were the primary perpetrators of the Holocaust.

The Involvement of the German Police in the Holocaust, 1933-1945

From the day that they seized power, the National Socialists recognized that they would need an elite force, freed from legal restraints, to implement those tasks Hitler deemed vital for the survival of the German nation and the establishment of a new order in Europe. The SS and the Police together formed the core of this force. During the late 1930s, Himmler sought to graft the ideological zeal of the SS onto the bureaucratic professionalism of the police. The link between the police and the SS made them the ideal executive agents for the extra-legal implementation of Hitler's will. SS leaders of the police withdrew police functions from the supervision and control of the civilian authorities. They began to use police authority in accordance with Hitler's wishes, without regard to the limits imposed by existing law.

Germany had no national police force in 1933. Over the next three years, Heinrich Himmler, the Reich leader of the SS, set about centralizing police forces in Germany under his control. In the spring of 1933, Nazi leaders Hermann Göring in Prussia and Himmler in Bavaria gained control of the Prussian and Bavarian political police forces and sought to separate them administratively from the remainder of the state police administration. During the next fifteen months Himmler was appointed chief of the political police force in each German state. In 1934, Himmler consolidated all German political police units into one central agency in Berlin, the Secret State Police or Gestapo, (*Geheime Staatspolizei*). In June 1936, Hitler appointed Himmler chief of all German police in addition to his duties as Reich Leader of the SS. That month, Himmler further centralized the Gestapo and the Criminal Police Detective Force into the Security Police Main Office and the uniformed street police into the Order Police Main Office. In November 1937, Himmler completed the centralization of the police under his control. He established regional Higher SS and Police Leaders, who commanded all SS and police forces in their regions as Himmler's personal representative.

The final step in the creation of an elite force operating outside normal legal channels for the implementation of Hitler's will was the formal administrative fusion between the security police and the Security Service of the SS, called the SD (*Sicherheitsdienst*). Himmler's close associate SS General Reinhard Heydrich was the chief of both the Security Police and the SD. In September 1939, four weeks after Germany invaded Poland, informal links between the security police and the SD were formally joined within the new Reich Central Office for Security under Heydrich. This office commanded all Security Police (Gestapo and Criminal Police) as well as all SD offices in Germany and, after 1939, in occupied Europe.

As the Nazis consolidated their position in Germany and rearmed for war, the police were deployed not only in traditional crime prevention, but also in breaking real and perceived political opposition to the regime, and punishing what the Nazis perceived as anti-social behavior. In 1938, the Gestapo became the sole agency to authorize what the Nazis labeled as "Protective Detention" (*Schutzhaft*) which permitted the police to indefinitely incarcerate without specific charge or trial persons deemed to be potentially dangerous to the security of the Reich. Such persons included political opponents and, later, so-called "racial enemies," especially Jews. They also included smaller groups, like the Jehovah's Witnesses, who, for reasons of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. Removed from

the jurisdiction of the German justice system, "protective detainees" were incarcerated either in prisons run by the Gestapo or in concentration camps without interference from the Ministry of Justice. Political prisoners were sent to concentration camps on the basis of a Protective Detention Order, signed by the appropriate Gestapo official. Permission to execute a prisoner required a signed order from the chief of Security Police and SD in Berlin (Heydrich).

With the centralization of the Criminal Police Detective Forces in 1936-1937 under SS General Arthur Nebe, the police forces in the Third Reich began to roundup large groups of so-called "Asocials" (panhandlers, "habitual criminals," vagrants, marginally disabled persons, prostitutes, pimps, persons unable to obtain or maintain steady employment, Gypsies, homosexuals, and others perceived not to be maintaining a healthy standard of social behavior). The standard "legal" tool employed by the Criminal Police was Preventative Arrest (*Vorbeugende Verhaftung*) and internment in a concentration camp.

The Nazis intended to conquer their thousand year Reich with military force and to "purify" it by murdering whole populations that they deemed racially harmful to the Reich (Jews, Roma also known as Gypsies, and the disabled) and killing the intelligentsia and leadership classes of other nations (Poles, and the populations of the Soviet Union). From the beginning, the police played a key role in guiding the implementation of these policies, working under cover of a war-induced state of "national emergency." In the summer of 1939, officials of the Führer Chancellery, Hitler's personal headquarters, planned the systematic murder of institutionalized mentally disabled persons, beginning with children. The killings were implemented at six institutional centers under the supervision of medical and criminal police personnel and using carbon monoxide gas, lethal injection or slow starvation as options for killing. The killings began one month after Germany invaded Poland. Between October 1939 and August 1941 between 70,000 and possibly 100,000 mentally disabled persons were murdered in Germany. Thousands of others were murdered by special detachments of SS and police in Poland in 1939-1940. Special units of the Security Police and SD (*Einsatzgruppen*) routinely murdered institutionalized disabled persons in the Soviet Union after June 1941.

The police played a key role in the concentration, expropriation, deportation, and murder of the Jews in Nazi-controlled Europe. After the incited anti-Jewish riots known as *Kristallnacht* ("The Night of Broken Glass") in November 1938, the Security Police and the SD under Heydrich's leadership assumed control of the process of forcing Jewish emigration from Germany, Austria and, after March 1939, the Czech lands. Special mobile units (*Einsatzgruppen*) of the Security Police and the SD (now reorganized into the Reich Security Main Office or RSHA) had the task of concentrating the Jews of occupied Poland in the larger cities. They were supported by Order Police battalions and local Polish auxiliary police. After the Jews of Poland were crowded into ghettos within the large cities, these ghettos were patrolled by Order Police and auxiliary police personnel.

To the RSHA under Heydrich and, later, his successor, Ernst Kaltenbrunner, fell the responsibility for coordinating the so-called "Final Solution" of the Jewish question. Tasked with this responsibility sometime in late December 1940, Heydrich sent the RSHA *Einsatzgruppen* into the Soviet Union with explicit orders to shoot male Jews and key officials of the Communist regime. Supported by 23 battalions of Order Police under

the direction of Higher SS and Police Leaders and by units of locally recruited auxiliaries, the *Einsatzgruppen* killed more than one million Jews--men, women and children-- in 1941 and 1942.

In occupied Poland, the district SS and Police Leaders coordinated the murder of the Jews. Under their authority, SS and police forces removed the Jews from the ghettos and deported them to specially designed killing centers at Belzec, Sobibor, Treblinka, Chełmno, and Auschwitz-Birkenau. The first four killing centers were run by criminal police and security police officials. Belzec, Sobibor, and Treblinka were guarded by specially trained auxiliary police guard units assigned to the Order Police. Between 3.5 and 4.0 million Jews were murdered at or en route to these killing centers. Order Police and Security Police personnel were also deployed in breaking Jewish resistance to the deportations from the Warsaw, Białystok and Vilna ghettos. German Order Police personnel tracked down and killed most of the Jewish survivors of the uprisings in the Treblinka and Sobibor killing centers in August and October 1943.

An RSHA office under command of SS Lieutenant Colonel Adolf Eichmann was responsible for the deportation of Jews from all over Europe to the killing centers in Nazi-occupied Poland. In countries directly occupied by Germany, including Norway, France, the Low Countries, and Italy after 1943, German Security Police and SD personnel were supported by local, indigenous professional police forces in rounding up the Jews and putting them on deportation trains to the East. To secure Jews from Germany's Axis partners (Italy before September 1943, Hungary, Romania, Finland, Bulgaria, Croatia, Slovakia and Vichy France), Eichmann had to negotiate through the German Foreign Office. Success in these efforts was limited, however. The Finns, Romanians, Bulgarians, Italians and Hungarians refused to hand over their Jewish residents (though Romanian military and police units were content to kill Jews, Gypsies and others in the Romanian occupied Ukraine and Bulgarian military and police units deported the Jews of Bulgarian-occupied Macedonia and Thrace to the killing centers). The Croats and Slovaks handed over most of their Jewish residents, deploying local police units and paramilitary auxiliaries to concentrate them and put them on trains. After the Germans occupied Hungary in 1944, the Hungarian gendarmerie was instrumental in the deportation of nearly two thirds of the Hungarian Jewish population. In the German Reich itself, Eichmann's RSHA department coordinated the deportations and local Order Police made sure that German Jews were put on trains for the East.

The Security Police were also charged with policing the growing population of foreign forced laborers in the Reich (over six million persons by 1944). Under Security Police auspices, special "Labor Education Camps" were set up throughout the Reich to punish foreign laborers who committed infractions on the job or fraternized too closely with the German population. Forced laborers from Poland and the occupied Soviet Union faced severe punishment, usually hanging, for actual or suspected sexual intercourse with German women. An RSHA decree of November 1942 that authorized the Security Police to prosecute crimes committed by Poles and Soviet civilians in the Reich noted that Poles and Soviet civilians were racially inferior and that those who committed crimes should be handled like the Jews and the Gypsies. In the summer of 1943, the chief of the RSHA, Kaltenbrunner, outlined the principle to be followed in such Security Police prosecutions: "...the Pole or Soviet Russian represents by virtue of his very existence a danger to the German racial order [*Volksordnung*]...it is therefore not so

important to find a suitable punishment for the crime committed...as to prevent him from presenting any further danger to the German racial order.”

In the final agony of defeat, many local Security Police and Criminal Police officials participated in arbitrary killings of prisoners in Gestapo and other police prisons. Almost always carried out under local initiative, these murders were motivated primarily by revenge for or despair at the coming defeat and to eliminate potential witnesses to crimes committed by the police.

The Nazi movement had been attractive to the German police in 1933 because it offered career advancement, improved funding and equipment, and the ideal of a “society without crime” maintained by a unified police force that emphasized the primacy of preventative policing. Even those police who were not prepared to buy the Nazi racial package could support that ideal. The brutal irony was that as the German police engaged themselves and were engaged ever more inextricably in mass murder (for which some would be tried after the war under existing murder statutes), they proved increasingly unable to protect German citizens from real crimes. Already in 1938-1939, the rate of juvenile crime was on the rise and would rise steadily through the war years. After Allied bombing destroyed German cities in 1943-1944, an underclass of escaped foreign laborers, youth gangs, and petty criminals preyed on the urban German population. As early as 1943, the German Criminal Police was issuing instructions to citizens on self-help in preventing petty crime because they could not count on immediate police response. This was a bald admission that, in Nazi Germany, the police could no longer protect society.

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Arrests without Warrant or Judicial Review (Protective Detention) in Nazi Germany

“Protective Detention” (Schutzhaft) authorized the police to indefinitely incarcerate without specific charge or trial persons deemed to be potentially dangerous to the security of the Reich. In Prussia alone, there were more than 25,000 protective detention prisoners by March-April 1933. Such persons included political opponents and, later, Jews as such. They also included smaller groups, like the Jehovah’s Witnesses, who, for reasons of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. “Protective Detainees” were incarcerated either in Gestapo prisons or in concentration camps. On the site of each main German concentration camp was stationed a Gestapo official who (1) maintained the prisoner arrest records; (2) recommended release or longer incarceration of prisoners; and (3) requested or received authorization for punishing or executing prisoners. Political prisoners were sent to concentration camps on the basis of a Protective Detention Order (see below), signed by the appropriate Gestapo official. Permission to execute a prisoner required a signed order from the chief of Security Police and SD in Berlin.

Order of Protective Detention

Based on Article 1 of the Decree of the Reich President for the Protection of People and State of February 28, 1933 (Reichsgesetzblatt I, Page 83), you are taken into protective detention in the interest of public security and order.

Reason: Suspicion of activities inimical toward the State.

From: International Military Tribunal, *Trial of the major war criminals before the International Military Tribunal, Nuremberg*, 14 November 1945-1 October 1946. Nuremberg, Germany; 1947-49; "Blue Series," Vol. 3, p. 497

The potential for abuse of protective detention was immense. Attempts to limit the arbitrary arrest of individuals failed because the police alone determined if a person posed a danger to the state and they did not have to explain why. Here is an early attempt by Wilhelm Frick to impose some measure of order on political arrests.

Wilhelm Frick, Reich Minister of the Interior,
Decree on Protective Detention Measures
April 13, 1934

In order to remedy abuses that have occurred during the imposition of protective detention, the Minister of the Interior, in his instructions to the provincial governments and to the Reich governors of April 12, 1934, has determined that:

Protective Detention orders may be issued only

- a) for the prisoner’s own protection [protective custody]
- b) if the prisoner, through his behavior, especially by [engaging in an] activity hostile to the state, directly endangers public security and order.

Accordingly, insofar as these conditions do not currently exist, the imposition of protective detention is not authorized, especially

- a) against persons who merely make a claim (for example, filed a charge against someone, filed a suit, or filed a grievance) to which they are entitled under civil or public law;
- b) against attorneys for representing the interests of their clients;
- c) in regard to personal matters, like, for example, insults;
- d) in regard to any economic measure (wage issues, dismissal of employees and similar issues)

Furthermore, protective detention is not authorized as a tool to investigate criminal acts, for this is the jurisdiction of the courts. In addition, protective detention may not be imposed solely because a person behaves in an asocial or otherwise objectionable manner, unless such behavior creates agitation in the population and, as a result, protective detention becomes necessary to protect the prisoner.

From: International Military Tribunal, *Trial of the major war criminals before the International Military Tribunal, Nuremberg*, 14 November 1945-1 October 1946. Nuremberg, Germany; 1947-49; "Blue Series," Vol. 26 pp 297-299

Preventive Police Arrest in Nazi Germany

Just as the Secret State Police, Gestapo, arrests individuals who it determines constitute a threat to the state, the Criminal Police, Kripo, arrests individuals if it determines them to be criminal and a threat to public order. As with those arrested by the Gestapo (protective custody prisoners) those under preventive police arrest have no recourse, no lawyer and no trial. They are interned directly in a concentration camp for a period determined by the police alone. By the end of 1939, there were more than 12,000 preventive arrest prisoners interned in concentration camps in Germany.

The following guidelines for the use of preventive police action against crime comes from Werner Best, *Der Deutsche Polizei* (Darmstadt: L.C. Wittich Verlag, 1940), pages 31-33.

Guidelines for Preventive Police Action Against Crime

“...In the internal distribution of responsibilities of the Police, prevention of “political crimes” is assigned to the Secret State Police [Gestapo]. In other cases the criminal police is responsible for the prevention of crime. The German criminal police operates according to guidelines in the prevention of crime according to the following principles:

The tools used in the prevention of crime is systematic police surveillance and police preventive arrest.

Systematic police surveillance can be used against those professional criminals who live or have lived entirely or in part from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison or to jail terms of at least three months for crimes from which they hoped to profit.

Further habitual criminals are eligible if they commit crimes out of some criminal drive or tendency and have been sentenced three times to prison or jail terms of at least three months for the same or similar criminal acts. The last criminal act must have been committed less than five years ago. The time the criminal spent in prison or on the run is not counted. New criminal acts which leads to additional convictions suspends this time limit.

All persons who are released from preventive police arrest must be placed under systematic police surveillance.

Finally systematic police surveillance is to be ordered despite these regulations if it is necessary for the protection of the People’s community (*Volksgemeinschaft*.)

In the application of systematic police surveillance the police can attach conditions such as requiring the subject to stay in or avoid particular places, set curfews, require the subject to report periodically, forbid the use of alcohol, or other activities, in fact,

restrictions of any kind may be imposed on the subject as part of systematic police surveillance.

Systematic police surveillance lasts as long as is required to fulfill its purpose. At least once every year the police must reexamine whether the surveillance is still required.

Preventive police arrest can be used against the following:

Professional and habitual criminals who violate the conditions imposed on them during the systematic police surveillance of them or who commit additional criminal acts.

Professional criminals who live or have lived entirely or in part from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison or to jail terms of at least three months for crimes from which they hoped to profit.

Habitual criminals if they have committed crimes out of some criminal drive or tendency and have been sentenced three times to prison or jail terms of at least three months for the same or similar criminal acts.

Persons, who have committed a serious criminal offense and are likely to commit additional crimes and thereby constitute a public danger if they were to be released, or who have indicated a desire or intention of committing a serious criminal act even if the prerequisite of a previous criminal act is not established.

Persons, who are not professional or habitual criminals but whose anti-social behavior constitutes a public danger.

Persons, who refuse to or falsely identify themselves if it is concluded that they are trying to hide previous criminal acts or attempting to commit new criminal acts under a new name.

Normally, police preventive arrest is to be used against these persons if it is concluded that the more mild measure of systematic police surveillance will unlikely be successful."

The Establishment of the New German Criminal Police
By SS-Oberführer (Reich Criminal Police Director) Arthur Nebe

Two years after the unification of the German criminal police detective forces under the Reich Criminal Police Office (*Reichskriminalpolizei*amt), the Reich Criminal Police Headquarters moved into its new quarters in the Werdischer Markt 5/6. The new headquarters contained quarters for the Criminal Police Technical Institute, which sported the latest criminal forensic technological methods. The newly refurbished and reopened building was christened by the Security Police and SD on the day before World War II began. A booklet was published to commemorate the event. Himmler, Heydrich, Criminal Police Director Arthur Nebe and several Criminal Police officials spoke on this occasion. In his speech, Nebe stressed in particular the new preventative policing methods of the "German" criminal police in the interests of a racially pure and crime-free society. Here are some excerpts from Nebe's speech:

"... Now a brief word concerning how the Reich Criminal Police Office carries out the responsibilities that have been assigned to it.

One would have to agree that solving crimes depends fundamentally on thorough training of police detectives, equipping them with good technical tools, and the model interplay of tactic and technique. That such prerequisites have been realized in the Reich Criminal Police is self-evident. Beyond this we have achieved an important, even decisive improvement with a genuinely model and superior organization of a criminal police intelligence reporting system. With its help the Reich Criminal Police Office can find out about every criminal act, every criminal organization, in the shortest possible time. The investigation of criminal acts, the expeditious search for and successful apprehension of criminals, however, is not the only responsibility of the criminal police. The National Socialist state leadership has, as previously indicated, set for the Criminal Police responsibilities that lead it far beyond the mere investigation of crime towards research into the causes of criminal behavior.

Certainly, we will never attain the ideal world in which crime simply no longer exists. Crime is a recurring disease on the body of the people. Just as a good physician—in some circumstances like a surgeon, the Reich Criminal Police Office will repeatedly attempt to locate the germs causing the disease and to discover from such germs how these illnesses appear constantly to develop anew. Once we recognize the germs, then we can take appropriate measures to prevent the development of new germs. Therein is the responsibility, but also the greatness of the task of our new German criminal police.

Should we, for example, ignore the fact that the anti-social are often those who become criminals? We can say without much exaggeration that criminal behavior takes root in anti-social behavior; from the latter the former draws strength and new blood. The shiftless vagabond does not only beg or steal, but seeks out like-minded sexual partners. Similarities attract, this is an old saying, to which the modern science of genetics has lent

new meaning and substance. The children that are created here, must, and who would deny it, be equipped with an inferior genetic makeup, that is, they will have anti-social tendencies. If, in addition, they grow up in a bad environment they can only become anti-socials or criminals.

It therefore makes no sense to rely exclusively on superficial surveillance of the lawbreaker. We must instead explore the sources of his criminal hereditary disease. We must draw practical conclusions from the results of this inquiry and prevent the development of such anti-social types. That is genuine practical prevention. The physician protects us from epidemics and serious contagious diseases. Are not the police, who are supposed to protect and secure society from crime, also obligated to intervene with the appropriate preventive measures wherever they see an injury to the life of our people?

Is it not much more humane to lock away a single, individual, burdened with congenital criminal propensities, from the community than to release him again after a relatively short prison sentence and thereby giving him the opportunity to inject his bad genetic makeup into our nation and to beget new criminals without restriction? Just think a moment, what is the first thing a criminal does, when he is released after spending 2 or 3 or 5 years in prison! The first thing he does is to engage in an orgy of sex! Herein lies the core and from here develops the problems with which the Reich Criminal Police Office must deal on a priority basis. In this light the work of the new criminal police is absolutely a matter of state policy.

And here is also the point at which the modern German criminal police and the German judicial system part ways, indeed, must part ways. Ultimately, the German judicial system—this is inherent in its task—can only deal exclusively with the individual person, although it obviously must also keep its vision, from a penal-political point of view, directed on the problem of crime in its entirety.

The criminal police, however, must first keep the protection of the whole community in view and only secondarily concern itself with the individual once he has perpetrated a crime. Such a task naturally demands from the men of the Security Police the maximum spiritual strength. There is hardly another state institution, that, as must the Security Police—that is, the State Police *and* [emphasis in the original] the Criminal Police—has to see and deal exclusively with the shadow realms of human life. We see only “negative” people, just as they are, without idealistic garnish, without theoretical analysis. We see them in the state of their primary instincts and in their inferior, genetically-determined behavior. But exactly for this reason, our activity appears to us to be enormously significant for the leadership of the state.

(...)So we, the men of the Reich Criminal Police Office, want to protect our Greater German race in the spirit of National Socialist ideas--wherever its blood stream is threatened by the bad characteristics and the inferior genetic material of those alien to the community--and we want to be the most loyal fighters of our Fuhrer and our people.”

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THE GERMAN SUPREME COURT AND THE NAZI STATE IN 1933

What the New Year will bring is uncertain. That it will be good is hardly to be expected; all signs indicate new attacks and struggles over the nature of law and judicial independence are coming. Loyal fulfillment of duty will give us the strength and the courage to meet these challenges successfully.
Supreme Court Justice Karl Linz, January 15, 1933.¹

I am deeply mortified, that I am to leave office, before I reach the mandatory retirement age, under such humiliating circumstances, after I have felt and acted my whole life like a "real" German. Loyalty can be found in every religion and every race. I think statesmen should preserve loyalty like a holy flame, regardless of where they may find it.

Supreme Court Justice Alfons David, shortly before his removal from the court because he was Jewish, March 1933.²

On January 15, 1933 Supreme Court Justice Karl Linz, in his capacity as head of the German Judges League, made an appeal to all German judges. He wrote that he expected another tumultuous year for judges in Germany, "a new struggle over the nature of law and judicial independence."³ Linz made this statement just two weeks before Hitler's unexpected appointment as Chancellor and could not have been referring to an expected struggle with a "Nazi" state.⁴ Like most Germans, Linz expected that the Weimar Republic would continue, despite the constitutional deadlock that had paralyzed the government since 1930.⁵

Linz's appeal to German judges referred instead to the struggle between Communists and Nazis over the fate of the Republic. Most Supreme Court justices expected the political disturbances that had flooded the Supreme Court with treason cases in 1932 would worsen in 1933. Treason trials invariably embroiled the court in political struggles. Both right and left wing parties attacked the decisions of the Supreme Court and demanded judicial "reform." Linz was warning judges that 1933 would be a year of severe trials and urged judges to prepare themselves for the coming struggle over judicial independence.

Less than a month after Hitler became Chancellor, he orchestrated the end of the legislative authority of Parliament and the creation of a police state. (Through the Enabling Act of March 1933, the Parliament transferred its legislative authority to the executive.) Supreme Court judges, like most judges, proved willing to sacrifice for a Nazi state, at least in part, the same judicial principles that Linz had urged them to defend in mid-January 1933. Supreme Court judges compromised their long cherished principles because they believed the Nazi regime

offered great advantages to the administration of justice. They believed that the Nazis would put an end to divisive political turmoil in Germany.

The Supreme Court first took official notice of Hitler's government on March 29, 1933, when the court issued a public statement welcoming Hitler's affirmation of judicial independence.⁶

*The Supreme Court welcomes thankfully the recognition of judicial independence made by the Reich Chancellor [in Parliament] during the governmental declaration of March 23, 1933 [in support of the Enabling Act]. Only the surety of their independence can give judges the inner freedom they require for the fulfillment of their high office. Enjoying such freedom, subject only to the law, they hold together the community of the People (Volksgemeinschaft) through their court decisions. This is the real job of judges.*⁷

This statement was extraordinary. The Supreme Court had not considered it necessary to issue similar statements to any of the preceding three chancellors, Bruening, von Papen and von Schleicher. Further, Hitler had not declared his support for judicial independence, indicating merely that judicial independence must be paired with a willingness among judges to depart from the letter of the law and to apply Nazi principles in deciding legal issues.⁸ In reality, the Supreme Court publicly thanked Hitler for guarantees he had never really made in the hope that he would honor them. The Court took this extraordinary action because it recognized that the fundamental nature of government in Germany had changed, not when Hitler was appointed chancellor in January, but when the Enabling Act was passed.

Hitler called the Enabling Act the "Law for the Relief of the Distress of the People and the Reich," a blatantly deceptive use of language.⁹ Parliament passed the law by more than the two-thirds majority required to alter the Constitution, because the Nazis intimidated and persecuted the representatives. The Nazis prevented all eighty-one Communist and twenty-six of the one hundred and twenty Social Democratic representatives from taking their seats and stationed SA and SS storm troopers in the chamber to intimidate potential opposition during the vote. In the end the law passed 441 to 94, with only the Social Democrats voting against the measure. The Enabling Act gave Hitler the right to enact laws, including ones violating the Weimar Constitution, without approval of either Parliament or the Reich President, freeing him from dependence on either.

Supreme Court judges had reason to be concerned about the changes Hitler might make in the judicial system. In March, Nazi party radicals had begun a campaign against Jewish professionals, even dragging Jewish judges out of courtrooms and humiliating them in the streets. Violent attacks on courts were particularly shocking to judges, who regarded violence in open court as a direct attack on the German state. They feared that SA attacks on the courts signaled Hitler's intention to restructure the court system. Judges were fully conscious of Hitler's authority and wary of Nazi radicals with a will to violence. The realization that Hitler had the authority, will, and power to restructure the government merged with their own serious concerns that Nazi party radicals would replace the judicial system with their own revolutionary courts.

This realization led Linz and other justices to send a delegation of judicial officials to meet with Hitler. They met in Berlin on April 7, 1933.

It should be emphasized that Linz was by no means a Nazi sympathizer. He had been a member of the Catholic Center party in the Weimar Republic and never joined the Nazi party, even after Hitler's rise to power.¹⁰ Further, he had unsuccessfully attempted in 1933 to maintain the independence of the German Judges' Association and to prevent its merger into the Nazi organization of jurists, the National Socialists League of German Jurists (BNSDJ).¹¹

After his meeting with Hitler, Linz issued a statement in the *German Judges' Gazette* calling on all judges to support Hitler's government.¹² He wrote that he believed that Hitler could restore order and provide security, as well as ensure Germany's economic, military, and political recovery.¹³ Linz personally assured Hitler that he could count on the support of judges and their traditional sense of duty to the state. Linz declared that judges were willing to work with Hitler against the Communists, asking only that Hitler maintain the traditional independence of the judiciary.¹⁴ Linz's conference with Hitler revealed important reasons for the overwhelming support that judges gave the Third Reich in 1933.

First, judges recognized Hitler's government as legitimate. He had been confirmed in office by the Reich president, and had taken the oath to uphold the Constitution. In the court's opinion, Hitler had legitimate power to issue constitution-altering legislation, since it was a power voted him by a two-thirds majority of the Reichstag in the Enabling Act. The court overlooked the absence of the Communist delegation and the many Social Democrats who were under arrest.¹⁵ Judges were so convinced of the legitimacy of Hitler's authority that they were confused by the proclamation of the so-called "Nazi Revolution." How could Hitler's government be revolutionary if it were constituted according to constitutional requirements? Erich Schultze, one of the first Supreme Court judges to join the Nazi party, ended the confusion by declaring that the term "revolution" did not refer to the legitimacy of the government in this case, but to Hitler's radically different ideas.¹⁶ Since German judges viewed Hitler's government as legitimate and regarded themselves as state servants, they therefore owed him their obedience and support.¹⁷

Secondly, judges supported Hitler because they approved of his decisive action against the left. In March and April 1933, the Nazis ruthlessly arrested their political opponents. In Prussia alone at least 25,000 people were arrested and detained without trial.¹⁸ Above all, the Nazis targeted the Communist political organization and prominent Social Democrats, Trade Unionists and Pacifists. The Supreme Court applauded the end of the Communist menace. In the Weimar Republic, the court had led judicial prosecution of Communists, declaring that there was a Communist conspiracy to overthrow the traditional order of society.

Third, Judges regarded Hitler as the restoration of a traditional authoritarian government, believing he would end the almost constant criticism of the administration of justice, which had come from leftists and Republican circles and, above all, from the floor of the Reichstag. The Nazi leadership, especially Hans Frank, the leader of the Nazi Jurists' League, played upon their desires for security.¹⁹ Frank declared that the Nazi regime was authoritarian and strong enough to ensure that the judges received the respect that they deserved by virtue of their service to the

state.²⁰ After the constant criticism of the Supreme Court in newspapers and in parliament during Weimar, these words came as a relief to Supreme Court justices.

Finally, judges hoped that Hitler would maintain the traditional independence of the German judicial system. Usage of the word “independence” referred to the impossibility of removal or transfer of judges, except on the basis of a court decision; to the prohibition of all government instructions concerning the interpretation of legal codes; and meant the insulation of judges, both spiritually and structurally, from the political influence of the state. Hitler promised that these basic principles would be maintained, that he would uphold judicial independence, but he indicated some “temporary” exceptions might have to be made. Hitler’s vague promises and the retention of a traditional conservative jurist, Franz Gürtner, as Minister of Justice, convinced judges that any violation of the rule of law, or of judicial independence, would be temporary. Judges would once again be pillars of an authoritarian state.

From the start the Supreme Court sought to accommodate itself to the Nazi state. Its members recognized the legitimacy of Hitler’s government and upheld Hitler’s right to enact legislation that violated the Weimar constitution and established legal practice. The court willingly submitted to and even facilitated the purge of Jews and politically unacceptable judges. The purges violated the principle of judicial independence, which held that no judge could be removed from office without judicial process. Recognizing the Nazi emphasis on racism and antisemitism, the Supreme Court readily accommodated itself to Nazi antisemitic legislation. It furthered both the removal of Jewish judges and aided substantially in the identification and prosecution of Jews who violated race laws. In this the court readily accepted the inequality of the races before the law. What had begun as a “temporary” compromise, ended in the self-abnegation of the Supreme Court before the Nazi state.

Notes

¹ Supreme Court Justice Karl Linz, "Zum neuen Jahre!" *DRiZ*, 25 (January 15, 1933): p. 3.

² Reichsgericht Personalia 143, Bundesarchiv Potsdam (BAP).

³ Linz's exact words are given as the first introductory quote of this chapter above.

⁴ For example, upon the news of Hitler's appointment as Chancellor, Harry Graf Kessler wrote in his diary, "The bewilderment was great; I had not expected this solution [to the constitutional crisis], and so soon." Wolfgang Pfeiffer-Belli ed., *Harry Graf Kessler: Tagebücher 1918-1933*, (Frankfurt am Main: Insel, 1961), p. 703.

⁵ Parliamentary government ended in Germany in 1930. Since then a minority cabinet, without parliamentary majority, governed Germany dependant on the Emergency authority of the Reich President. There was no reason for Linz to expect this state of affairs to end, short of the restoration of a ruling majority in Parliament.

⁶ *DRiZ*, 25 (1933): p. 123. See also Horst Göppinger, *Der Verfolgung der Juristen jüdischen Abstammung durch den Nationalsozialismus* (Villingen: Ring Verlag, 1963), pp. 43-44.

⁷ *DRiZ*, 25 (1933): p. 123.

⁸ What Hitler actually said was "Der Unabsetzbarkeit der Richter auf der einen Seite muss eine Elastizität der Urteilsfindung zum Wohl der Gesellschaft entsprechen." Hitler made no promise to uphold judicial independence. Max Domarus, *Hitler Reden und Proklamationen 1932-1945* Vol 1 Part 1 (Wiesbaden: Lowit, 1973), p. 233.

⁹ Gesetz zur Behebung der Not von Volk und Reich March 24, 1933. *RGBL* (1933) I: p. 141.

¹⁰ Dr. Karl Linz was born on May 23, 1869 in Bingerbrück. He entered state service as an assessor in 1897 and was appointed to District Court Judge in 1901. He was promoted to the State Courts in 1906, State Superior Court in 1910 and the Supreme Court in 1910. He became Senate President in 1932. Reichsgericht Personalia 537, BAP. See also Lobe, *Fünfzig Jahre Reichsgericht*, p. 383; and Kaul, *Geschichte des Reichsgerichts*, pp. 279-80.

¹¹ Hans Wrobel, "Der Deutsche Richterbund im Jahre 1933," in Redaktion Kritische Justiz, *Der Unrechts-Staat II* (Baden-Baden: Nomosverlagsgesellschaft, 1984) p. 76. The BNSDJ later changed its name to the National Socialist League of Law Guardians (NSRWB).

¹² *DRiZ*, 25 (1933): pp. 156-57.

¹³ *Ibid.*

¹⁴ *Ibid.* pp. 155-56.

¹⁵ See Decision of the Supreme Court in the treason trial of van der Lubbe, Torgler, Dimitroff, Popoff, and Taneff December 23, 1933. A copy can be found in the MA 89/4, Institut für Zeitgeschichte Munich.

¹⁶ Erich Schultze, "Richter und Staatsanwalt im Dritten Reich" *DRiZ*, 25 (October 25, 1933): p. 278.

¹⁷ Hartung, *Jurist unter Vier Reichen*, p. 97; Hubert Schorn, *Der Richter im Dritten Reich: Geschichte und Dokumente* (Frankfurt am Main: V. Klostermann, 1959), pp. 8-9.

¹⁸ Martin Brozat "Nationalsozialistische Konzentrationslager 1933-1945" in *Anatomie des SS-States* vol. 2 (Munich: Deutsche Taschenbuchverlag, 1967) p. 17 and Martin Weinmann ed. *Das Nationalsozialistische Lagersystem* (Frankfurt am Main: Zweitausendeins, 1990), p. XC.

¹⁹ Hans Frank joined the NSDAP in 1923 and took part in the Hitler Putsch. Frank studied law in Munich and defended Hitler in court several times. He became the party's highest legal advisor. In 1933, Hitler appointed him Bavarian Minister of Justice, Reichsfuehrer of the National Socialist German Jurists' League (NSDJB), and President of the Academy of German Law. Frank also headed the Nazi takeover of the judicial professional organizations. During the war, Frank became Governor General of Poland (1939-1945). The Nuremburg tribunal sentenced him to death and he was executed on October 16, 1946. Christoph Klessmann "Hans Frank: Party Jurist and Governor-General in Poland" in Ronald Smelser ed. *The Nazi Elite* (New York: New York University Press, 1993), pp. 39-46; and Wistrich, ed. *Wer war Wer*, pp. 73-74.

²⁰ *DRiZ*, 25 (1933): p. 271.

THE SUPREME COURT AND RACE DEFILEMENT CASES

The Supreme Court's rejection of "political necessity" as an overriding factor in determining the verdict of the Reichstag fire trial¹ (1933) was tantamount to a declaration that the Court would not bow to blatant government direction. The Nazis could not use the Supreme Court to stage politically important show trials. Yet even in the Reichstag fire case the Court made every effort to comply with Nazi demands within the limits set by normal judicial practice. Following the trial and the emergence of a strong Nazi regime the Court became more obliging to the Nazis, especially in the interpretation and application of their racial legislation.

Most Supreme Court decisions made in the Third Reich were not related to Nazi ideology nor were they politically important. Hitler and the Nazis were not interested in most civil and trade law appeals. Nor were the Nazis inclined to intervene in "normal" criminal appeals, at least before the war. The Supreme Court operated as usual in those fields of law. Nevertheless, Hitler and the Nazis were intensely interested in infusing court decisions with Nazi racial ideology. The entire legal order in Germany was full of special regulations for Jews, to lend legitimacy to Nazi policies persecuting Jews. The Supreme Court quickly accepted the inequality of the races and adopted it in all fields of civil and criminal law.²

Even before the Nazis enacted racial legislation, the Supreme Court began to use racial consideration in its decisions. As early as December 1934, the Fourth Civil Senate, for example, recognized the dissolution of a marriage on racial grounds well before any revision of the divorce laws permitted annulment on those grounds.³ The case involved a man who sought to divorce his wife on the grounds that she was not racially acceptable. She was born Jewish and had converted to Protestantism. Her husband brought suit in November 1934 claiming the marriage was based on mistaken circumstances and was therefore void. The State Superior Court in Hamburg ruled that this was an obvious attempt on the part of the husband to use the changed political circumstances in Germany to rid himself of his wife and rejected the appeal.⁴ The Supreme Court expedited the appeal because of its obvious importance to the Nazis. The Fourth Criminal Senate overturned the lower court decision and granted the divorce stating that once the Nazi state informed the husband of the importance of racial issues, he realized his marriage was not legitimate. Dissolution of the marriage on racial grounds was now legitimate.

The importance of the 1935 racial legislation to the Nazis was underlined by the circumstances of its enactment. Hitler called a special session of parliament at the 1935 Nazi party congress in Nuremberg. In this special session the Reichstag passed two landmark race laws, often referred to simply as the "Nuremberg Laws."⁵ The first of the Nuremberg Laws, the Reich Citizenship Law, deprived Jews of their civil rights. It defined "Jews" on the basis of ancestry: thus persons having one or more Jewish grandparents were categorized as Jewish or of "mixed" race. The second of the two, the Law for the Protection of German Blood and German Honor, prohibited marriages and sexual relations between Jews and Germans.⁶

In Hitler's view the principle of the inequality of the races applied to all areas of civil and criminal law and was thus the natural province of the Supreme Court, whose decisions superseded those made by all lower courts. Soon, Supreme Court decisions eased the difficulties inherent in implementing anti-Jewish policies that lacked adequate definitions and practical guidelines for their application across a broad spectrum of law, from divorce cases to criminal race defilement. Further, the Supreme Court's acceptance and application of the race laws served an important propaganda purpose. In accepting racial principles and applying them in appellate decisions, the Supreme Court conferred legitimacy on racial discrimination and persecution.

Even before the first appeal involving the Nuremberg race laws reached the Supreme Court in 1936, the Court had signaled its willingness to apply Nazi racial legislation without reservations. In October 1935, President Bumke ordered the retention of records relevant to the determination of "racial" health and descent. Prior to 1935 these records were destroyed, but now they were routinely transferred to the Government Health Office. These records included court rulings and supporting documentation dealing with paternity, marriage, name changes, and guardianship, but also included criminal records involving juveniles.⁷ Further, President Bumke indicated at a November 1936 meeting of justice officials called to discuss the race laws that the Supreme Court could accept the interpretation of those laws favored by Dr. Roland Freisler, who at that time was still a state secretary in the Ministry of Justice. Freisler advocated extending the interpretation of the law as much as possible. As he put it "the Law for the Protection of German Blood and German Honor is a regulation which establishes the very foundation of the German people, which we do not seek to narrow but to broaden for the protection of our race."⁸

While Bumke did not promise in November that the Supreme Court would interpret the law as broadly as possible, in one of the first important rulings on the interpretation of the race laws, the Court did precisely that. Less than a month after the conference, on December 9, 1936, the Reich Prosecutor requested that the Court clarify precisely what was meant by the term "sexual relations" in the Law for the Protection of German Blood and German Honor. The Law proscribed "sexual relations" between Jews and those of German or related blood. The Supreme Court had previously interpreted sexual relations to mean sexual intercourse or actions mimicking sexual intercourse.⁹ This definition made it extremely difficult to prosecute sexual violations, since the practice typically occurred between consenting adults in private. The Supreme Court aided the Nazis in overcoming this difficulty by broadening the meaning of the terms "sexual relations" and "German Honor."

In a landmark ruling, the Great Senate for Appeals in Criminal Cases of the Supreme Court interpreted "sexual relations" to mean more than sexual intercourse.¹⁰ According to the justices, it referred to any natural or unnatural sexual act between members of the opposite sex, in which sexual urges are in any way gratified. The Supreme Court indicated such an extensive interpretation of the law was required because the equation of the terms "sexual intercourse" and "sexual relations" would have set almost insurmountable barriers to prosecution by making the production of evidence of a crime very difficult. Further, the law was intended to protect not just the purity of German blood, but also German honor. This required, according to the Court, the proscription of all sexual acts between those of German or "related blood" and Jews, not just intercourse.¹¹

The Court moved again to force a harsh application of the laws on March 28, 1938. Here the Second Criminal Senate of the Supreme Court overturned a lower court ruling, granting leniency to a person convicted of violating the Law for the Protection of German Blood and German Honor. The lower court, State Court I in Berlin, had ruled that the sexual liaison between a Jew and a German girl had been ongoing before the enactment of the law prohibiting sexual relations between them. Thereafter the defendant had found it difficult to break off such a long-standing relationship. The lower court found this to be a reason for leniency since the defendant did not callously and with premeditation break the law.

The Supreme Court overturned this ruling, indicating that the circumstances really provided grounds for imposing maximum penalties. The Court insisted that the intentions of the individual were not the determining issue in deciding penalties for these cases. Instead, the penalties imposed had to reflect the importance of protecting the purity of German blood and honor. Even if the German in question was a prostitute, her honor was not in question, because the honor of the Germanic race as a whole was at stake.¹² According to the Supreme Court, the continuing sexual relationship between the defendant and a German woman even though prohibited, indicated a blatant rejection of National Socialist legislation on the part of the defendant. This was evidence that supported increased, not reduced, criminal penalties.¹³

Almost a year later, on January 5, 1939, the Fifth Senate for Appeals in Criminal Cases broadened the application of the race laws further, declaring even the verbal proposition for sexual relations between Germans and those of Germanic blood and Jews constituted a violation.¹⁴ Here the case involved a Jewish man who had propositioned a chambermaid in a hotel, offering a bracelet in exchange for sex. She refused. The Supreme Court ruled this constituted race defilement because the solicitation reflected actions inherently connected to sexual relations. Asking for sex, with the expectation that sexual intercourse would follow an affirmative answer by the prospective partner, was already a violation of the law. The Court emphasized that the negative answer on the part of the chambermaid legally had no effect in the determination of the commission of a crime.¹⁵

Less than a month later, on February 2, 1939, the Second Senate for Appeals in Criminal Cases again extended the application of the law. This time the Court ruled explicitly that bodily contact was not a prerequisite for prosecuting individuals for violating the race laws. That is to say, race defilement could occur without any bodily contact between Jews and those of German or related blood. The Court again broadened its interpretation of the term "sexual relations," ruling that sexual relations was any act which promoted sexual gratification and postulated that this was possible without physical contact.

Specifically, the Court ruled that masturbation when a person of the opposite sex was present, even without physical contact of any kind between the two, constituted a violation of the race laws. Masturbation was race defilement when three conditions were present: one party was Jewish and the other of German or related blood, when the presence of the other person contributed to sexual excitement of either party, and when both parties, at least tacitly, agreed to the practice. The Court held such acts violated "sound popular instincts" (*Gesundes Volksempfinden*) and were contrary to the government's racial policy. Consequently "such unnatural acts" used as a substitute for sexual intercourse were violations of the Law for the Protection of German Blood and German Honor.¹⁶

In addition to broadening the interpretation of “German honor” and “sexual relations,” the Supreme Court stiffened criminal penalties by extending jurisdiction of German law abroad. On February 23, 1938, the Great Senate for Criminal Appeals ruled that a German Jew and a German who temporarily left the country in order to engage in sexual activities had violated the Law for the Protection of German Blood and German Honor.¹⁷ The Court found that while the law did not explicitly forbid sexual relations abroad, the extension was necessary due to the importance of the legislation. The Court explicitly recognized the racial laws as central to the National Socialist agenda, serving the preservation of racial purity of the German people. Consequently, the Court ruled, every step required to prosecute those who violate the law, even if committed abroad, must be taken.¹⁸

Since it was the practice of the Supreme Court to assign appeals of criminal cases to particular senates by court districts, all Supreme Court senates dealing with criminal appeals were involved with the application of the Law for the Protection of German Blood and German Honor. This meant all the judges sitting on those senates contributed to Nazi racial persecution. After the war judges claimed the Nazis bypassed the ordinary court system, establishing Special Courts to apply Nazi laws. But this was never the case in the application of the Law for the Protection of German Blood and German Honor. The Supreme Court applied the law; Supreme Court judges, not special Nazi appointees, broadened its application. There was never a case in which the Supreme Court decided an appeal of the race laws in favor of the defendant.

Notes:

¹ Despite the Nazis' insistence that the Communist party was to blame for the Reichstag fire in February 1933, the Supreme Court decided on the evidence that the arsonist, Marinus van der Lubbe, a Dutch leftist-radical had acted alone. The court found his Communist co-defendants not guilty.

² See for example Uwe Diederichsen, "Nationalsozialistische Ideologie in der rechtsprechung des Reichsgerichts zum Ehe- und Familienrecht" in *Recht und Justiz im "Dritten Reich"* edited by Ralf Dreier and Wolfgang Sellert (Frankfurt am Main: Suhrkamp Verlag, 1989) pp. 257-270.

³ Angermund, *Deutsche Richterschaft*, pp. 115-117.

⁴ *Hanreatische Rechtszeitschrift* (1934): pp. 742-746.

⁵ For the circumstances surrounding the enactment of the legislation see Schleunes, *Twisted Road*, pp. 122-126.

⁶ Reichsbürgergesetz, *RGBL* (1935) I: p. 1146 and Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre, *RGBL* (1935): p. 1146.

⁷ Bumke's order in Reichsgericht Generalia 13, BAP.

⁸ Niederschrift über die Aussprache aus Anlass der Tagung betreffend die Blutschutzrechtsprechung vom November 13, 1936. R22 File 50, BAK.

⁹ Reich Prosecutor Nagel admitted as much and argued against the general application of the new definition to civil law. There the term "sexual relations" continued to refer to intercourse. See his position paper on the court's new interpretation of the meaning of "Sexual Relations" in R22, File 50, BAK.

¹⁰ The Great Senate of the Supreme Court made the decision. Sitting justices were President Bumke, Vice President Bruner, Senate President Witt and Justices Schmitz, Tittel, Niethammer, Raestrup, Vogt, Hoffmann and Schultze.

¹¹ Great Senate for Appeals in Criminal Cases December 9, 1936 *Entscheidung des Reichsgerichts in Strafsachen* vol. 70, pp. 375-377.

¹² See also the decision of the Second Senate for Criminal Appeals of January 7, 1937 R22 50 BAK.

¹³ Decision of the Second Senate for Criminal Appeals of March 28, 1938 R22 50 BAK.

¹⁴ *Entscheidung des Reichsgerichts in Strafsachen* vol. 73, pp. 76-78.

¹⁵ *Ibid.*

¹⁶ *Ibid.* pp. 94-97.

¹⁷ *Ibid.* vol. 72, pp. 91-96.

¹⁸ *Ibid.*

Translated from the original German in the Federal Law Register (1935).

The Reich Citizenship Law of September 15, 1935

The Reichstag has unanimously enacted the following law, which is promulgated herewith:

Article 1

1. A subject of the State is a person who enjoys the protection of the German Reich and who in consequence has specific obligations towards it.
2. The status of subject of the State is acquired in accordance with the provisions of the Reich and State Citizenship Law.

Article 2

1. A Reich citizen is a subject of the State who is of German or related blood, who proves by his conduct that he is willing and fit to faithfully serve the German people and Reich.
2. Reich Citizenship is acquired through the granting of a Reich Citizenship Certificate.
3. The Reich citizen is the sole bearer of full political rights in accordance with the Law.

Article 3

The Reich Minister of the Interior, in coordination with the Deputy of the Führer, will issue the Legal and Administrative orders required to implement and complete this law.

Nuremberg, September 15, 1935
At the Reich Party Congress of Freedom

The Führer and Reich chancellor
[signed] Adolf Hitler

The Reich Minister of the Interior
[signed] Frick

Translated from the original German in the Federal Law Register (1935).

The Law for the Protection of German Blood and German Honor of September 15, 1935

Moved by the understanding that purity of the German Blood is the essential condition for the continued existence of the German people, and inspired by the inflexible determination to ensure the existence of the German Nation for all time, the Reichstag has unanimously adopted the following Law, which is promulgated herewith:

Article 1

1. Marriages between Jews and subjects of the state of German or related blood are forbidden. Marriages nevertheless concluded are invalid, even if concluded abroad to circumvent this law.
2. Annulment proceedings can be initiated only by the State Prosecutor.

Article 2

Extramarital relations between Jews and subjects of the state of German or related blood is forbidden.

Article 3

Jews may not employ in their households female subjects of the state of German or related blood who are under 45 years old.

Article 4

1. Jews are forbidden to fly the Reich or National flag or display Reich colors.
2. They are, on the other hand, permitted to display the Jewish colors. The exercise of this right is protected by the State.

Article 5

1. Any person who violates the prohibition under article 1 will be punished with a prison sentence.
2. A male who violates the prohibition under article 2 will be punished with a jail term or to a prison sentence.
3. Any person violating the provisions under articles 3 or 4 will be punished with a jail term of up to one year and a fine, or with one or the other of these penalties.

Article 6

The Reich Minister of the Interior, in coordination with the Deputy of the Führer and the Reich Minister of Justice, will issue the Legal and Administrative regulations required to implement and complete this Law.

Article 7

The Law takes effect on the day following promulgations except for Article 3 which goes into force on January 1, 1936.

Nuremberg, September 15, 1935

At the Reich Party Congress of Freedom

The Führer and Reich Chancellor

[signed] Adolf Hitler

The Reich Minister of the Interior

[signed] Frick

The Reich Minister of Justice

[signed] Dr. Gürtner

The Deputy of the Führer

[signed] R. Hess

Translated from the original document in the Republic of Germany Federal Archives in Koblenz, Germany.

In the Name of the German People

The Great Senate for Criminal Cases of the Supreme Court in its session of December 9, 1936 in which the following participated:

The President of the Supreme Court Dr. Bumke as presiding judge
The Vice President of the Supreme Court Bruner
Senate President Dr. Witt
Justices Schmitz, Dr. Titel, Niethammer, Raestrup, Vogt, Dr. Hoffmann,
Dr. Schultze

in the appeal of the State's Attorney under Article 137 subsection 2 of the Court Organization Act has decided the following:

The term "sexual relations" in the context of the Blood Protection Laws does not include every kind of illicit sexual action [Unzücht], but is also not restricted to sexual intercourse alone. It includes the entire range of natural and unnatural sexual relations that, in addition to sexual intercourse, include all other sexual activities with a member of the opposite sex that according to the nature of the activity is intended to serve as a substitute for sexual intercourse in satisfying the sexual needs of a partner.

Grounds:

The question of law, which is to be decided by the Great Senate under article 137 subsection 2 of the Court Organization Act upon the appeal of the State's Attorney for the First Criminal Senate [of the Supreme Court] in two pending cases, is posed as follows:

Whether the term "sexual relations" in the context of article 11 of the first Ordinance for the Implementation of the Law for the Protection of German Blood and German Honor of November 14, 1935 (Federal Register I page 1334) is to be understood as referring only to intercourse, acts similar to intercourse or all illicit sexual acts.

The requirement of article 2 of the Law for the Protection of German Blood and German Honor, which forbids extramarital relations between Jews and citizens of German or related blood, is elaborated upon in article 11 of the First Implementation Ordinance to the extent that extra marital relations as defined here means only sexual relations. What is to be understood by the term "sexual relations" is left for the courts to decide.

"Sexual relations" is not to be made equivalent to all illicit sexual acts. If the legislator had intended to encompass all illicit sexual acts in the prohibition then he would have chosen to include in the wording of the law the word "Unzücht" [illicit sexual acts],

which has long had clear and specific definition in jurisprudence. The term "Unzücht" [illicit sexual acts] encompasses much broader, and even one sided, acts of a sexual nature that by no means could be labeled "sexual relations."

Additionally one has to look at the law as a whole in the interpretation of article 2. The proscription against marriages (article 1) and the proscription against employment (article 3) clearly shows that the intent of the legislator is to secure the maintenance of the purity of German blood through general proscriptions independent of the special circumstances involved in individual cases. The proscription against marriage is true even in those cases where both parties have ruled out the possibility of children resulting from the union; the proscription against employment is true even if in individual cases the Jewish member of a household, either because of age or illness, cannot be expected to make sexual advances. The comparison with these provisions leads to the conclusion that the provisions of Article 2 are valid not just in those cases involving extramarital sexual relations which result in pregnancy or which could have resulted in pregnancy.

Other difficulties argue against such a narrow definition equating "sexual relations" with "intercourse." Such a definition would pose nearly insurmountable difficulties for the courts in obtaining evidence and force the discussion of the most delicate questions.

A wider interpretation is also required here because the provisions of the law serve not only to protect German blood but also to protect German honor. This requires that intercourse and such sexual activities –both actions and tolerations- between Jews and citizen of German or related blood be proscribed which serve to satisfy the sexual urges of one party in a way other than through completion of intercourse itself.

[Signed] Bumke Bruner Witt Schmitz Tittel
Niethammer Raestrup Vogt Hoffmann Schultze.

Source: Bundesarchiv Koblenz Record Group R22 File 50.

Antisemitic Legislation 1933-1939

During the first six years of Hitler's dictatorship, government at every level—Reich, state and municipal—adopted hundreds of laws, decrees, directives, guidelines and regulations that increasingly restricted the civil and human rights of the Jews in Germany. Here are examples of anti-Jewish legislation in Nazi Germany 1933-1939:

1933

March 31 Decree of the Berlin city commissioner for health suspends Jewish doctors from the city's charity services.

April 7 Law for the Reestablishment of the Professional Civil Service removes Jews from government service

April 7 Law on the Admission to the Legal Profession forbids the admission of Jews to the bar.

April 25 Law against Overcrowding in Schools and Universities limits the number of Jewish students in public schools.

July 14 De-Naturalization Law revokes the citizenship of naturalized Jews and "undesirables."

October 4 Law on Editors bans Jews from editorial posts.

1935

May 21 Army law expels Jewish officers from the army.

September 15 Nuremberg Laws

1936

January 11 Executive Order on the Reich Tax Law forbids Jews to serve as tax-consultants.

April 3 Reich Veterinarians Law expels Jews from the profession.

October 15 Reich Ministry of Education bans Jewish teachers from public schools.

1937

April 9 The Mayor of Berlin orders public schools not to admit Jewish children until further notice.

1938

January 5 Law on the Alteration of Family and Personal Names forbids Jews from changing their names

February 5 Law on the Profession of Auctioneer excludes Jews from this occupation.

March 18 The Gun Law excludes Jewish gun merchants

April 22 Decree against the Camouflage of Jewish Firms forbids changing the names of Jewish-owned businesses

April 26 Order for the Disclosure of Jewish Assets requires Jews to report all property in excess of 5,000 Reichmarks (RM).

July 11 Reich Ministry of the Interior bans Jews from health spas

August 17 Executive Order on the Law on the Alteration of Family and Personal Names requires Jews to adopt an additional name—"Sara" for women and "Israel" for men

October 3 Decree on the Confiscation of Jewish Property regulates the transfer of assets from Jews to non-Jewish Germans.

October 5

The Reich Interior Ministry invalidates all German passports held by Jews. Jews must surrender their old passports, which will become valid only after the letter "J" had been stamped on them.

November 12 Decree on the Exclusion of Jews from German Economic Life closes all Jewish-owned businesses

November 15 Reich Ministry of Education expels all Jewish children from public schools

November 28 Reich Ministry of Interior restricts the freedom of movement of Jews

November 29 The Reich Interior Ministry forbids Jews to keep carrier pigeons.

December 14 An Executive Order on the Law on the Organization of National Work cancels all state contracts held with Jewish-owned firms

December 21 Law on Midwives bans all Jews from the occupation.

1939

February 21 Decree Concerning the Surrender of Precious Metals and Stones in Jewish Ownership

August 1 The President of the German Lottery forbids the sale of lottery tickets to Jews.

Nazi Guidelines for Sentencing, 1942-1945

On August 20, 1942, Hitler appointed a convinced Nazi, Otto Thierack, as Reich minister of justice. The appointment of Thierack heralded a disaster for the administration of justice in Germany. With free reign from Hitler, Thierack was responsible for the bloody injustice that characterized the administration of justice between 1942 and 1945. Less than six weeks after his appointment, Thierack issued the first in a series of so-called "letters to be issued to all judges." These letters were actually official guidelines to be used in sentencing. The letters presented the position of the state on political questions and on the legal interpretation of Nazi laws, especially on the imposition of the death penalty. These letters dealt with such varied cases as divorce, the legal determination of Jewish descent, the refusal to give the Nazi salute, the treatment of anti-social elements, and looters. In practice, these letters tended to compel judges, who were under constant threat of removal from office, to choose the safe path of least resistance and decide a case according to the examples in the letters. The letters were classified as state secrets because the Security Service of the SS was convinced that the intensification of state control over the judicial system would be extremely unpopular if it became public knowledge. In the SD report of May 30, 1943, the SD declared, "The people want an independent judge. The administration of justice and the state would lose all legitimacy if the people believed judges had to decide in a particular way."

Here is an excerpt from Thierack's first letter in which he demanded death sentences for all persons convicted under the so-called "Pest Law" (*Volksschädlingsgesetz*) of September 5, 1939. According to Article 4 of the law, a "Pest" was someone who purposely committed a crime by exploiting the extraordinary circumstances of the war. They could be sentenced to death regardless of the crime they committed, if judges determined "sound popular instinct" required the offender's death.

Letter to All Judges-Announcement of the Reich Minister of Justice- Nr.1

1. "Pests" (*Volksschädlinge*); especially "blackout criminals"

Judgments of various courts from the years 1941-1942

1. Shortly after his hiring in the winter of 1941-1942, a 19-year-old worker who was employed on the Reich railway since 1941 exploited the blackout and stole from the baggage car of a long distance train, from parked mail carts and from packages. In total, he was involved in 21 cases [of theft]. The Special Court sentenced him as a "Pest" to four years in prison.

2. At the end of 1941, a 34-year-old metal worker tried to commit a purse snatching during a blackout. In a darkened street, he attacked a woman, ripping her purse from her arm. He was chased down and arrested. The culprit had been previously convicted six times for, among other things, larceny, physical assault, and manslaughter. He was convicted for physical assault in 1931 because he and a communist beat up a National Socialist with a gatepost.

The Special Court classified the crime as larceny rather than mugging because the women carried her handbag so loosely that the robber didn't have to use violence to take it. The court, however, did declare him a "Pest" because he posed a serious threat to the community. However, the punishment was only 2 years in prison.

3. In early 1941, a repeat offender, a "work-shy" 29-year-old worker tried to steal a handbag during a blackout. He had just been released from the hospital, where he had been faking an illness and wanted to get some money. He pursued two women on a dark street and grabbed for a handbag as he passed them. He couldn't tear it away, however,

because it was tightly held. A few men came rushing when they heard a cry for help and they captured the accused. The Special Court sentenced him to death for attempted robbery as a "Pest." The court indicated at sentencing that those walking on darkened streets require special protection in order to safeguard the people's feeling of public safety.

4. At the start of 1941, an 18-year-old culprit, W., who had previously led a faultless life, exploited the blackout to commit sexual assault on the wife of a soldier at the front. After visiting a bar and returning home around midnight, he and his 19-year-old girlfriend, P., spoke with a young woman who was just returning from work. She explained to the youths that she had to leave because her husband was away at the front and that she wanted to go home. A man standing close-by observed W. beat the victim repeatedly in the face without reason. He then pushed the women into a park; beating her and then raped her on a bench. He quelled her efforts at resistance by telling her he had a pistol. During the incident, P. was nowhere to be found. The Special Court sentenced W. to death for sexual assault as a "Volk Vermin" P. received a 5-year prison sentence as an accomplice.

Official Position of the Reich Minister of Justice

At a time when the best of our people are risking their lives at the front and when the home front is tirelessly working for victory, there can be no place for criminals who destroy the will of the community. Those in the administration of justice must recognize that it is their job to destroy traitors and saboteurs on the home front. The law allows for plenty of leeway in this regard. The home front is responsible for maintaining peace, quiet, and order as support for the war front. This heavy responsibility falls especially to German judges. Every punishment is fundamentally more important in war than in peace. This special fight is targeted especially against those designated by law as "Pest" Should a judge decide after conscientious examination of the criminal act and of the perpetrator's personality that a criminal is a "Pest," then the seriousness of this determination must also be firmly expressed in the harshness of the verdict. It is a matter of course that a plunderer, who reaches for the possessions of another after a terror attack [bombing] by the enemy, deserves only death. But every other culprit who commits his crimes by exploiting the circumstances of war also sides with the enemy. His disloyal character and his declaration of war [on the German people] therefore deserve the harshest punishments. This should especially be applied to criminals who cowardly commit their crimes during blackouts. "I don't want," the Führer said, "a German women to return from her place of work afraid and on the look-out; that no harm is done to her by good-for-nothings and criminals, after all a soldier should expect that his family, his wife and relatives are safe at home."

The majority of German judges have recognized the immediate needs of the moment. The death sentence that the Special Court handed out to the 18-year-old assailant of the defenseless soldier's wife, and to the "work-shy" purse-snatcher, placed the protection of the people above all other interests. There are, however, still cases in which the personal

circumstances of the culprits are placed above the interests of the necessary protection of the community. This is shown in the comparison of the judgments listed above. The cunning, nighttime handbag robbery perpetrated by a culprit with prior convictions and the twenty-one thefts committed by the 19-year-old worker were wrongly punished with four years in prison. The decisive factor [in sentencing] is not whether stealing the handbag was legally theft or robbery (which by the way, does not depend upon whether the bag was carried tightly or loosely); it is not whether the sex offender caused a specific damage with his offense. That he cowardly and cunningly attacked a defenseless woman, and endangered the security of the darkened streets, makes him a traitor. The protection of the community, above all, requires that punishment in such cases serve as deterrence. Prevention here is always better than reparation. Every sentence given a "Pest" which is too lenient sooner or later damages the community and carries in itself the danger of an epidemic of similar crimes and the gradual undermining of the military front lines. It is always better for the judge to quell such epidemics early than to stand helpless later against an infected majority. In the fourth year of his prison sentence the criminal should not get the impression that the community's fight against him is waning. On the contrary, he must always feel that German judges are fighting just as hard on the home front as the soldiers are with the foreign enemy on the military front.

Letters to the Judges-announcement of the Reich Minister of Justice Nr. 2

November 1, 1942

5. Non-compliance with Measures Identifying Jews

A retired Jewish woman pensioner abstained from amending her given name with the proper identifying name "Sara" in an official telephone directory for 1940 and 1941.¹ The District court sentenced her to pay a 30 RM (Reichsmark) fine or in lieu of the fine, to serve ten days in jail. In its explanation of the decision, the district court stated that the decisions of the state courts affirmed that Jewish women were required to amend their names with the addition of the name "Sara" in all telephone directories. For this reason, the Jewish woman in this case must be punished. The mild punishment given here is explained in part by the fact that for some time individual judges had not referred to the state court decisions as a basis for deciding such cases.

Official Position of the Reich Minister of Justice

The decision does not contain any reasoning for the verdict. The district court's reliance on the decisions of the state courts does not remove it from the obligation of rendering its own explanation for the decision. Its decision further creates the impression that the judges did not themselves agree with the State Court determination of guilt but reluctantly bowed to that court's superior authority. The judgment should state clearly and concisely the main reasons for the decision. The main point here is as follows: the inclusion of the accused in the official telephone directories entered her, as a retired woman, into the realm of general legal and business transactions. The entry in the telephone directory serves as the participant's calling card for telephone transactions. Registration and the change of names [as required by law] are therefore absolutely necessary to prevent deception.

The basis for the determination of punishment is also insufficient. The judgment must be clearly decided: should the court recognize the action as punishable, it must apply the appropriate punishment, regardless of the number of other cases in which defendants were acquitted due to improper considerations on the part of the court. The idea that defendants need not reckon with their conviction because, as illustrated by the divergence in court decisions, the law is not uniformly applied, is not grounds for leniency. A court, which cites individual verdicts as grounds for special leniency, in reality compromises with the defendant. What this woman did was a real attempt to camouflage her Jewish identity. That this fact is only slowly becoming recognized is what is astounding.

¹ According to the 2nd Ordinance for the implementation of the law concerning the ending of last and first names of August 17, 1938 (RGBL I pp. 1044) Jews who did not possess one of the specific Jewish names listed by the Reich Minister of the Interior, were required in legal and business situations to use the first names Israel and Sara beginning on January 1, 1939. Violations of this order carried a penalty of up to 6 months in Jail.



Walter Meyer
WMT0859M

Born 1927, the Rhineland, Germany

As a youth, Walter questioned the German superiority and antisemitism he was taught. His father, an anti-Nazi, refused to allow Walter to enter one of the Adolf Hitler Schools, but did permit him to join the Hitler Youth. However, Walter's rebellious streak led him to hide a Jewish friend in his basement. He also formed a gang that played pranks on young Nazis and helped French prisoners of war. They called themselves Edelweiss Pirates (as did other groups of opposition youth in Germany). In 1943 Walter was caught taking shoes from a bombed-out store, arrested, and imprisoned. He was eventually deported to the Ravensbrueck concentration camp, where he was forced to work in the stone quarry. In 1945, Walter contracted tuberculosis and decided to escape before he was killed. Under cover of heavy fog, he reached a farmhouse. The farmer gave him his son's army uniform and helped him board a train home to Duesseldorf. Walter recovered after hospitalization, and later moved to the United States.

Describes his 1943 trial for looting, and the impact of his role in the Edelweiss Pirates on the sentence he received [1996 interview]

"On April the 12th, April the 12th, 1943, I was taken to court. By trial, the state attorney--I think they call it here, district attorney--state attorney, asked for the death penalty. My father--this was first time I saw my father and my mother--uh, my mother couldn't, couldn't control herself, so she was crying. My, my father didn't quite know what to do. They had two attorneys. When he recommended the death penalty, I know they kind of jumped over and held my arm and said, "That's not the last word." Then kind of the judge and the state attorney and somebody else, some functionary, they kind of argued about whether it was looting, or whether it was theft. The idea was that the two, uh, had different consequences. And, uh, so they retired then and when he came back, the judge decided, or had decided that it was--well, before that they had an argument and the state attorney said, uh, "I would call it theft, but this man, having had intimate contact with our enemy, and being the leader of, uh, the Edelweisspiraten [Edelweiss Pirates], having destroyed, uh, state goods, state property, does not deserve any kind of consideration." Well, when the judge came back and said, on the grounds of his outstanding, uh, involvement in, in athleticism, and considering, uh, the age and the circumstances, I condemn you to one to four years in prison."

Glossary

Concentration Camps: Places of incarceration under the administration of the SS, in which people are detained without regard to due process and the legal norms of arrest and detention. In addition to concentration camps, the Nazi regime ran several other kinds of camps under various SS, military, police or civilian authority including labor camps, transit camps, prisoner-of-war camps, and killing centers.

Secret State Police (Gestapo): Police detective force responsible for investigating political crimes and opposition activities.

Criminal Police (Kripo): Police detective force responsible for investigating non-political crime.

Heinrich Himmler: Reich Leader of the SS and Chief of the German Police.

Higher SS and Police Leaders: Created by decree on November 13, 1937 to provide coordination and integration for SS and police units in special security operations. They were Himmler's regional personal representatives in dealings with all local subordinate and parallel agencies. In event of emergency, the Higher SS and Police Leader commanded all SS, Order Police, Security Police, SD, and Waffen SS units in the region for which he was responsible.

SS and Police Leaders: District level commanders of all SS and Police forces. Directly subordinate to the regional Higher SS and Police Leader.

Inspectors/Commanders (Befehlshaber) of the Security Police and the SD: Regional representatives of the chief of Security Police and SD. Command all Security Police (Gestapo and Kripo) units for their regions.

Commander (Kommandeur) of the Security Police and the SD: District commander of Security Police and SD. Directly subordinate to the Commander (Befehlshaber) of Security Police and SD.

Reich Security Main Office (Reichssicherheitshauptamt-RSHA): Headquarters of the Commander of the Security Police and SD. Included the central offices of the Gestapo, the Kripo, and the SD. Commanded by Reinhard Heydrich and, later, Ernst Kaltenbrunner.

Mobile Killing Units: (Einsatzgruppen) mobile units of the Security Police and SD augmented by Order Police and Waffen SS personnel. These units followed the German Army as it invaded the nations of Central and Eastern Europe. Its duties included the arrest or elimination of political opponents and potential resistance, securing documentation and establishing local intelligence networks. In Poland in 1939, these units were assigned to shoot Polish intellectuals and to concentrate the Jewish population into large cities. In the wake of the German invasion of the Soviet Union in 1941,

Einsatzgruppen personnel had explicit instructions to kill Jews, Soviet political commissars, Gypsies (Roma), mentally disabled persons, and other real or perceived "racial" and ideological enemies of the German Reich.

Order Police: regular uniformed police force. Central Headquarters in Berlin at the Main Office Order Police. Municipal Police (Schutzpolizei) served as the urban police forces; Gendarmerie, or rural police served in the countryside. There were also larger units of Order Police called Police Battalions.

Police Battalions of the Order Police: These are large police formations with military training and equipment. Police battalions are normally deployed for internal security. The Nazis occupation authorities used them to police occupied territory during World War II. They patrolled occupied territories, guarded rail lines, and carried out other security duties. They were frequently deployed in deportations, ghetto liquidations, and in support of massacres carried out by the Einsatzgruppen or ordered by the Higher SS and Police Leaders. They participated in searching for escaped Jews on the countryside and in anti-partisan operations. In an emergency they could be sent to the front to fight under army command.

Commander (Befehlshaber) of Order Police: Regional commander of all Order Police units. Directly subordinate to the BdO were the Commanders (Kommandeure) of the Order Police at the District level.

Preventive Arrest (Vorbeugende Verhaftung): Instrument of detention that permitted criminal police detectives to take persons suspected of participating in criminal activities into custody without warrant or judicial review of any kind. Preventive arrest usually meant indefinite internment in a concentration camp.

Protective Custody (Schutzhaft): Instrument of detention that permitted secret state police detectives to take persons suspected of pursuing activities hostile to state interests into custody without warrant or judicial review of any kind. Protective custody was based on Article 1 of the Decree of the Reich President for the Protection of the People and the State of February 28, 1933. Protective custody most often meant indefinite internment in a concentration camp.

Reinhard Heydrich: SS General and chief of the Security Police and SD (after 1939, of the RSHA). Sometime in December 1940, Heydrich was tasked with developing a "Final Solution" of the Jewish question in Europe. On July 31, 1941, he was given authority to deal with all agencies of the Reich in his capacity as the official responsible for implementing the "Final Solution."

Security Service (Sicherheitsdienst--SD): an SS agency which served as the political intelligence service of the Nazi Party and, later, the German Reich. The SD also claimed for itself as an organization to be the repository of the intellectual elite of the Nazi SS. The SD played an important role in carrying out the Holocaust. All major units of the Security Police were commanded by SD officers.

SS (Schutzstaffel; or Protection Squad): Established originally as a bodyguard for Hitler as Führer of the Nazi political movement, the SS later became not only the elite guard of the Nazi Reich, but also a Führer executive force prepared to carry out all security-related duties, regardless of legal restraint. From the beginning of the Nazi regime, Hitler entrusted the SS first and foremost with the removal and eventual murder of political and so-called racial enemies of the regime. Among its many so-called security-related duties, the chief was the agency charged with the leadership of the so-called Final Solution, the implementation of the murder of the European Jews.

Führer Chancellery: A small cabinet of officials deployed to handle the personal and official affairs of the Führer in so far as they did not relate directly to the Party (Party Chancery) or the State (Reich Chancery). Through the officials of the Führer Chancery, the so-called euthanasia program--the murder of the mentally disabled--was planned, financed and implemented with the assistance of medical and criminal police personnel.

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